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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,359	07/01/2003	Denise R. Barbut	161,700-052	5397
34263	7590	08/19/2004	EXAMINER	
O'MELVENY & MEYERS 114 PACIFICA, SUITE 100 IRVINE, CA 92618			TANNER, HARRY B	
			ART UNIT	PAPER NUMBER
			3744	

DATE MAILED: 08/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/612,359	<b>Applicant(s)</b> BARBUT, DENISE R.	
	<b>Examiner</b> Harry B. Tanner	<b>Art Unit</b> 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/1/03</u> . | 6) <input type="checkbox"/> Other: ____  |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-2, 4-5, 7, 10-11, 13-14, 16 and 19-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Macoviak et al (6,139,517). Macoviak discloses an aortic shunt having first tubular member with expanding cylindrical balloon 244 engaging the lumen of the aorta and second tubular member 252 with a plurality of ports within the first tubular member and having an adjustable diameter in order to control the blood flow to the carotid arteries (see Figures 9a and 9b).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6, 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macoviak et al (6,139,517) as applied to claim 1 above and further in view of Don Michael. Don Michael teaches the use of a catheter that carries a body comparable to a stent in order to deliver chemical or biological material (see col. 2, lines 33-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Macoviak such that it included a

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stent in order to deliver chemical or biological material in view of the teachings of Don Michael.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macoviak et al (6,139,517) as applied to claim 1 above, and further in view of Aillon. Aillon teaches the use of a manometer in order to measure the pressure in the catheter (see col. 3, lines 34-37). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Macoviak such that it included the use of a manometer in order to measure the pressure in the catheter in view of the teachings of Aillon.

Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macoviak et al (6,139,517) as applied to claim 1 above, and further in view of Avellanet. Avellanet teaches the use of radiopaque markers in order to locate the position of the catheter (see col. 2, lines 49-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system of Macoviak such that it included the use of radiopaque markers in order to locate the position of the catheter in view of the teachings of Avellanet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry B. Tanner whose telephone number is (703) 308-2622. The examiner can normally be reached 8:30 am to 6:00 pm Monday, Wednesday, Thursday and Friday and 2:00 pm to 6:00 pm Tuesday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel, can be reached on (703) 308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Harry B. Tanner", with a stylized flourish at the end.

Harry B. Tanner  
Primary Examiner  
Art Unit 3744

HBT